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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 JESUS MARTINEZ, ) No. ED CV 08-01903-R (VBK)  
12 )  
13 ) Petitioner, ) MEMORANDUM AND ORDER DENYING  
14 )  
15 ) v. ) RESPONDENT'S MOTION TO DISMISS  
16 )  
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18 ) JOHN SALAZAR, )  
19 )  
20 ) Respondent. )  
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17 On December 23, 2008, Jesus Martinez (hereinafter referred to as  
18 "Petitioner") filed a "Petition for Writ of Habeas Corpus by a Person  
19 in State Custody" pursuant to 28 U.S.C. §2254. In accordance with the  
20 Court's Order on January 29, 2009, Respondent filed a "Notice of  
21 Motion and Motion to Dismiss; Memorandum of Points and Authorities in  
22 Support of Motion to Dismiss Petition for Writ of Habeas Corpus" and  
23 "Notice of Lodgment," contending that the Petition was barred by the  
24 one-year statute of limitations set forth in 28 U.S.C. §2244(d)(1) as  
25 amended by the Antiterrorism and Effective Death Penalty Act of 1996  
26 ("AEDPA"). On February 3, 2009, the Court issued a Minute Order  
27 ordering Petitioner to file an Opposition or Statement of Non-  
28 Opposition to the Motion to Dismiss. On February 9, 2009, Petitioner

1 filed an "Answer to Respondent's Motion to Dismiss," which the Court  
2 construed as an "Opposition." In this document, Petitioner attached  
3 as Exhibit 1 a Petition for Writ of Habeas Corpus filed in the  
4 Riverside Superior Court on August 9, 2007, which Petitioner alleges  
5 entitled him to statutory tolling of the one-year statute of  
6 limitations.

7 On February 11, 2009, the Court issued a Minute Order ordering  
8 Respondent to file a Reply to Petitioner's Opposition within 14 days.  
9 On February 26, 2009, Respondent filed a "Reply to Petitioner's  
10 Opposition to the Motion to Dismiss Petition for Writ of Habeas  
11 Corpus." In this document, Respondent concedes that the Petition was  
12 timely filed.

13 In light of Respondent's concession, the Court **HEREBY DENIES**  
14 Respondent's Motion to Dismiss and **ORDERS** Respondent to file an Answer  
15 addressing the merits of the Petition within 30 days of the date of  
16 this Order.

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18 DATED: 3/4/2009

  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE